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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.833 OF 2017

Sou. Sunita Masaji Waghmare ...Appellant
Versus
Shri. Masaji Bhimrao Waghmare ...Respondent

Mr. Ajit M. Savagave, for the Appellant.

Mr. Umesh Kurand, for the Respondent.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 1st FEBRUARY 2023**

P.C. :

1. Heard Mr. Savagave, learned counsel appearing for the Appellant and Mr. Umesh Kurand, learned counsel appearing for the Respondent.

2. Mr. Savagave, learned counsel appearing for the Appellant submits that the following substantial questions of law are involved in this Second Appeal:-

- i. Whether the order dated 3rd April 2017 passed by the learned District Judge-1, Barshi below Exhibit-1 in Civil Miscellaneous Application No.49 of 2016 is proper and legal?

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ii. Whether sufficient reasons given in Civil Miscellaneous Application No.49 of 2016 for condonation of delay in filing the Appeal challenging the Judgment and Decree dated 24th August 2012 in Hindu Marriage Petition No.66 of 2011 are ignored by the learned District Judge-1, Barshi in passing the impugned order dated 3rd April 2017 passed below Exhibit-1 in Civil Miscellaneous Application No.49 of 2016?

3. It is the contention of Mr. Savagave, learned counsel appearing for the Appellant that sufficient reasons are given in Civil Miscellaneous Application No.49 of 2016. However, the same are completely ignored by the learned First Appellate Court and therefore, the impugned order is totally perverse.

4. Mr. Savagave also pointed out that the Respondent has filed Hindu Marriage Petition No.149 of 2013 seeking divorce inter alia on the ground that the Judgment and Decree of restitution of conjugal rights passed by the learned Civil Judge, Senior Division, Barshi in Hindu Marriage Petition No.66 of 2011 has not been complied with by the Appellant-wife. He submitted that learned Civil Judge, Senior Division, Barshi, decreed the said petition on 1st December 2015. He further

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pointed out that the said Judgment and Decree has been set aside in Regular Civil Appeal No.5 of 2016 by the learned Extra Joint District Judge, Barshi by the Judgment and Decree dated 11th December 2018.

5. On the other hand, it is the submission of Mr. Umesh Kurund, learned counsel appearing for the Respondent that the Appellant failed to assign sufficient reasons for condonation of delay and therefore, the application was rightly rejected. The learned counsel appearing for the Respondent supported the impugned order dated 3rd April 2017.

6. Before considering the substantial questions of law raised by the learned counsel appearing for the Appellant, following undisputed facts are required to be noted:-

- i. The marriage between the Appellant and the Respondent took place on 7th February 1988 and five daughters were born out of said wedlock.
- ii. The Respondent-husband filed petition for restitution of conjugal rights bearing Hindu Marriage Petition No.66 of 2011 under Section 9 of the Hindu Marriage Act, 1955 and the same was

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decreed on 24th August 2012.

iii. Thereafter husband filed petition for divorce under Section 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955 bearing Hindu Marriage Petition No.149 of 2013. The said Hindu Marriage Petition No.149 of 2013 was decreed by the Judgment and Decree dated 1st December 2015. The said decree has been challenged by the present Appellant by filing Regular Civil Appeal No.5 of 2016 before the learned Extra Joint District Judge, Barshi, Dist. Solapur and the said divorce decree has been set aside by the Judgment and Decree dated 11th December 2018. However, the maintenance amount was reduced from Rs.8,000/- to Rs.4,000/- per month from 1st December 2015.

7. Perusal of the contentions raised by the Appellant in Civil Miscellaneous Application No.49 of 2016, by which application was filed seeking condonation of delay of 3 years and 11 months in filing the Appeal challenging the Judgment and Decree dated 24th August 2012 passed in Hindu Marriage

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Petition No.66 of 2011 passed under Section 9 of the Hindu Marriage Act, inter alia, the following reasons are given:-

- i. It is the contention of the Appellant that in compliance with Judgment and Decree dated 24th August 2012, the Appellant went for cohabitation on 12th September 2012, however, she was thrown out of the house on 9th March 2013.
- ii. The Respondent has not paid the amount of maintenance and arrears are of more than Rs.1,50,000/- and therefore, execution for recovery of the said amount is pending. As the Appellant is facing financial constraints, there is delay in filing the Appeal.
- iii. The Appellant is suffering from health issues.
- iv. Daughter Sarika is suffering from health issues.
- v. After the Hindu Marriage Petition No.66 of 2011 was decreed on 24th August 2012, marriage of elder daughter Subhdra was fixed and the same was performed on 9th February 2013. It is mentioned

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that as the Respondent refused to advance any amount for the purpose of said marriage, private loan was taken.

vi. Thereafter, marriage of another daughter Sushila was also fixed and the same was performed on 27th May 2013 and for that purpose loan was taken from the relatives and others.

vii. On 4th May 2014, daughter Sushila gave birth to Ashwini and thereafter again daughter Sushila delivered on 28th October 2015.

viii. It is the contention of the Appellant that as the Respondent-husband refused to pay any amount to the Appellant, she was required to spend money for the said marriages and the deliveries of the daughter and therefore, time was required for filing the Appeal.

8. Perusal of the impugned order dated 3rd April 2017 passed by the learned District Judge-1, Barshi shows that the detailed reasons given by the Appellant are completely ignored. The reasons given by the learned First Appellate Court for rejecting

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the delay condonation application of the Appellant are set out hereinbelow:-

“The appeal against the judgment and decree of divorce is pending before this Court. Now, the applicant wants to get condoned the delay in filing the appeal against the judgment and decree in petition for restitution. There is no doubt that there is reason to condone the delay as the applicant could not file any appeal against the judgment and decree in petition for restitution i.e. HMP No.66/2011. Now, the applicant wants to get set aside the said judgment and decree passed against her for restitution by condoning the delay. There is no sufficient ground to condone the delay. The right is accrued in favour of respondent and the application is liable to be rejected.”

9. Perusal of the reasons given by the learned First Appellate Court clearly shows that sufficient reasons given by the Appellant are not at all taken into consideration by the learned District Judge-1, Barshi. Therefore, impugned order rejecting Civil Miscellaneous Application No.49 of 2016 is totally perverse. The reasons given by the Appellant in Civil Miscellaneous Application No.49 of 2016 clearly show that

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there are very valid and sufficient reasons for condonation of delay. Therefore, the impugned order dated 3rd April 2017 passed by the learned District Judge-1, Barshi below Exhibit-1 in Civil Miscellaneous Application No.49 of 2016 is required to be quashed and set aside and said Civil Miscellaneous Application No.49 of 2016 is allowed by condoning the delay in filing the Appeal challenging the Judgment and Decree passed in Hindu Marriage Petition No.66 of 2011.

10. As a consequence of the condonation of delay, the Regular Civil Appeal No.49 of 2016 is restored and it is further directed that the same be heard on merits and for that purpose, both the parties are directed to appear before the concerned learned District Judge, Barshi on 27th February 2023 for deciding the schedule of hearing of the Appeal.

11. It is clarified that if, present Respondent i.e. Masaji Bhimrao Waghmare remains absent on 27th February 2023 before the learned First Appellate Court, then the learned First Appellate Court to issue notice to the Respondent as per the provisions of law.

12. The learned District Judge-1, Barshi is requested to

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dispose of the Appeal expeditiously.

13. The Second Appeal is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]